

# Memorandum

**TO:** Vocational Rehabilitation Counselors  
**CC:** Vocational Rehabilitation Specialists, Kris Peterson  
**FROM:** Glenn Morton  
**DATE:** February 8, 2007  
**SUBJECT:** Meeting Announcement & Results of December 15, 2006 Meeting

The next informal meeting between court staff and certified vocational rehabilitation counselors is scheduled for Friday, March 9, 2007, at 2:00 pm. The meeting will be held at the court's administrative offices at 1221 "N" Street, Suite 402, in Lincoln (TierOne Center). Meetings are held on a quarterly basis, with future meetings tentatively scheduled for June 8, 2007, September 14, 2007, and December 14, 2007

The following are the results from the December 15, 2006 meeting. If you have questions or concerns about any of the discussions or decisions at this meeting please notify the court prior to the next meeting and they will be considered at that time.

**1. Labor Market Information:** Discussions continued on labor market information, resulting in a reaffirmation of the elements and principles agreed to at the June 25, 2004 meeting. These are restated as follows:

Labor market information. It was agreed that sufficient information must be submitted to the specialist to establish (1) that the proposed job is available in the community and the projected outlook for that job, (2) that the employee meets the minimum qualifications for the job, in the case of job placement, or will meet the minimum qualifications after successful completion of training, (3) that the employee will be able to earn a wage comparable to what he or she was earning at the time of the injury, and (4) that the job is consistent with the employee's restrictions. The labor market resources that were used to determine the job's availability must also be identified. The specialists are and will remain flexible as to what information will satisfy these requirements. A labor market survey (i.e., contacts with employers and documentation of each contact) is not required in every case, but may be necessary in individual cases.

Emphasis was placed on the fact that while a labor marked survey (as defined above) is not required in every case, the listed labor market information is required in every case. In some situations a labor market survey may be needed to obtain the necessary information.

**2. Plan Justification and the Plan Approval/Denial Process:** Discussion then moved to other issues relating to plan justification and the plan approval/denial process. The focus was initially on whether it is possible to establish standards to insure more consistency in developing and reviewing plans, with the response to most questions being "it depends."

However, it quickly became clear that the issue underlying the questions was the specialists' review of proposed plans and how they exercise their judgment in requesting additional supporting information. There were comments from counselors that while the individual requests from the specialists are not out of line, the "standard of proof" has been creeping up over time. As a result the counselors have increased their efforts in anticipation of what is required to get a plan approved. This in turn has resulted in increased costs to the system. At the same time, it was recognized that the specialists must insure that standards are met, and are required to make an independent determination on the suitability of each plan. Therefore, there is a natural tendency to hold all plans to a very high standard. The question then becomes what standard is acceptable and what guidance there is for the specialists in exercising their judgment.

It was first noted that section 48-162.01(3) establishes a rebuttable presumption that a plan developed by a counselor and approved by a specialist "is an appropriate form of vocational rehabilitation." (Emphasis added.) It was recognized that the specialists are not required to insure that each plan is the best plan or the most appropriate form of rehabilitation, so long as the proposed plan will result in suitable employment consistent with the listed priorities. Attention was also drawn to the policy announced by Glenn Morton at the February 20, 2004 meeting which established the process to be followed if a counselor questions the purpose or reasonableness of a request from a specialist. (See the outcomes memorandum from that meeting on the court's web site.)

This policy was established to insure that plans are not held up because of disputes between a counselor and court specialist regarding the necessary information, and to provide some recourse to a counselor who disagrees with a request from a specialist. However, it is also intended to serve as a positive and productive way for counselors to bring concerns regarding plan review to the specialists and court management. It is the responsibility of court management to provide guidance to the specialists in the performance of their duties and in the exercise of their judgment in reviewing plans. To do this the specialists and court management must become aware of issues that should be addressed. Therefore, counselors are encouraged to use the process described in the February 20, 2004 policy to bring matters of concern to the attention of the court, and should rest assured that this will be received positively and with an eye to whether changes to the review procedures are needed. Counselors are also encouraged to raise any such concerns at the regular meetings of the counselors and specialists, and they will be considered at that time.

**3. Next meeting agenda items.** At the next meeting on March 9, 2007, we will address the following as time permits:

- a. Court technology reengineering. Randy Cecrle, the court's Information Technology Manager, has requested time to discuss the court's business process reengineering efforts relating to vocational rehabilitation, including a review of the results of the technology survey recently completed by counselors and planning for future "stakeholder" focus meetings.
- b. Plan justification and plan approval/denial process. Wrap-up discussions as

needed.

c. Changes to VR Plan Form.

**4. Future meeting agenda items.** The following topics will likely be addressed at future meetings. Any suggestions for additional agenda items are welcome.

a. Changes to Case Closure Form. The legislature is increasingly requesting information regarding the vocational rehabilitation program and the success of vocational rehabilitation plans. However, existing data is insufficient to allow the court to respond fully to these requests. Could the Case Closure Form be amended to provide the necessary data, and if so, what data should be collected?

b. Job Placement Plans. What is the counselor's role and what are the counselor's obligations in a job placement plan?